

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2002-247-G – ORDER NO. 2002-742

OCTOBER 25, 2002

IN RE: Application of South Carolina Pipeline)	ORDER GRANTING
Corporation for Approval of an Agreement)	MOTIONS OF SOUTH
for the Provision of Experimental Resale)	CAROLINA PIPELINE
Firm Service and Transportation between)	CORPORATION AND
The City of Orangeburg, South Carolina)	APPROVING CONTRACT
And South Carolina Pipeline Corporation.)	

I. INTRODUCTION

On July 19, 2002, South Carolina Pipeline Corporation (“SCPC”) filed with the Public Service Commission of South Carolina (“Commission”) an Agreement for the Provision of Experimental Resale Firm Service and Transportation Between the City of Orangeburg, South Carolina, and South Carolina Pipeline Corporation (the “Contract”) and requested that the Contract be approved. Under the Contract, which has a commencement date of November 1, 2002, SCPC is to provide the City of Orangeburg (“Orangeburg”) with a combination of tariffed Distributor Firm Service and, on an experimental basis, Resale Firm Transportation Service.

The Executive Director of the Commission duly issued a Notice of Filing on July 24, 2002. The Notice of Filing was provided to the Commission’s routine distribution list on July 24, 2002 and was thereafter published in newspapers of general circulation by SCPC on or before July 27, 2002. The date of August 9, 2002 was established in the

Notice of Filing as the last date by which interested persons or entities could timely file petitions to intervene or letters of protest with the Commission.

Petitions to Intervene were timely filed by Transcontinental Gas Pipe Line Corporation (“Transco”), the Consumer Advocate for the State of South Carolina (“Consumer Advocate”), and Nucor Steel – South Carolina and Nucor Steel – Berkeley County, Divisions of Nucor Corporation (“Nucor Steel”). In addition, a Petition to Intervene Out of Time was filed by Sequent Energy Management (“Sequent”)¹ on September 13, 2002.

On September 27, 2002, SCPC filed a Motion to Approve Contract, requesting that the Commission approve the Contract without requiring a public hearing. On September 27, 2002, SCPC also filed a pleading entitled Motion to Delay or Defer a Determination on Sequent Energy Management’s Petition to Intervene Out of Time; Alternatively, Motion to Deny Petition to Intervene Out of Time, challenging Sequent’s right to intervene in this docket out of time.

On September 30, 2002, Orangeburg forwarded a letter to the Commission “strongly” supporting the Motion to Approve Contract. Replies to SCPC’s motions were filed by the Consumer Advocate and Sequent on October 4, 2002. On October 8, 2002, SCPC filed a Stipulation entered between SCPC and Nucor Steel in which, among other things, Nucor Steel waived its right to request a formal hearing on the issue of whether the Contract should be approved.

¹ Reference to Sequent in this order does not imply that it has been permitted to intervene as a party of record in this docket.

II. FINDINGS OF FACT

Based upon the pleadings and other evidence in this docket, the Commission makes the following findings of fact:

1. None of the intervenors or Sequent objected to or opposed the approval of the Contract for the provision of services by SCPC to Orangeburg. See Consumer Advocate's Petition to Intervene ("The Consumer Advocate does not oppose the provision of these services to the City of Orangeburg."); Nucor Steel's Stipulation ("Nucor does not object to the Contract being approved for the benefit of the City of Orangeburg. . . ."); Letter of Transco, dated September 19, 2002 (Transco "does not oppose the approval of the agreement between South Carolina Pipeline Corporation and the City of Orangeburg."); Letter of Sequent, dated September 20, 2002 ("Sequent has no interest in interfering with or delaying the availability of firm transportation to Orangeburg."). Orangeburg itself "urge[d] the Commission to approve the contract at the earliest practicable time so that the citizens and gas customers of the City of Orangeburg can begin to receive the benefits of the contract. . . ." Letter of Orangeburg, dated September 30, 2002.

2. No customer² similarly situated to Orangeburg has sought and been refused services on terms and conditions similar to those to be provided by SCPC to Orangeburg under the Contract.

3. Nucor Steel is the only current customer of SCPC that intervened in this proceeding. In its Stipulation with SCPC, Nucor Steel waived its right to request a

² In its pleadings and memorandum, Sequent did not allege that it was a customer or potential customer of SCPC. Sequent's interest lies in its desire to market its gas marketing services to customers of SCPC. See also Letter of Sequent, dated September 20, 2002.

hearing to contest or challenge approval of the Contract; however, Nucor Steel specifically reserved its right, among other reservations, to contend at a later time “that SCPC should provide firm transportation to Nucor (or all customers) on either the terms and conditions applicable to Orangeburg or any other such terms and conditions that Nucor may wish to propose” Nucor Steel Stipulation at 4. SCPC likewise reserved its right “to argue in this or future proceedings that such Contract should not be made available to all other customers.” *Id.*

4. No one has challenged the Contract and its terms and conditions as being unreasonable, imprudent or not in the public interest as they relate to Orangeburg and SCPC. Further, Orangeburg desires immediate approval “so that the citizens and gas customers of the City of Orangeburg can begin to receive the benefits” of the Contract on and after November 1, 2002.

III. CONCLUSIONS OF LAW

Based upon the pleadings, other evidence in this docket and the above findings of fact, the Commission concludes as a matter of law that:

1. The sole justiciable issue presented to the Commission for immediate determination is whether or not the Contract should be approved. There is unanimous agreement among SCPC, Orangeburg, the intervenors, and Sequent that the Contract should be immediately approved. No one has challenged any essential services, terms or conditions of the Contract and the Commission is unaware of any reason for not approving the Contract. The Commission therefore concludes that the Contract and its services, terms and conditions are reasonable, prudent and in the public interest and that

the Contract is hereby approved for the provision of services as stated therein by SCPC to Orangeburg on and after November 1, 2002.

2. The primary issue raised by the Consumer Advocate and Sequent is that the word “experimental” in the Contract may be used by SCPC to deny the services available to Orangeburg under the Contract to other similarly situated customers. These concerns do not require adjudication now. Currently, there are no other customers similarly situated to Orangeburg that have sought and been refused services similar to those to be provided under the Contract. In short, the Consumer Advocate and Sequent request that the Commission make a determination of third party rights where no case or controversy -- or even third party -- presently exists. Further, there is no evidence that SCPC has denied services similar to those to be provided under the Contract to other bona fide customers or that SCPC has failed to engage in negotiations with any customer seeking services similar to those to be provided to Orangeburg.

3. The issues advanced by Sequent and the Consumer Advocate simply do not present a justiciable case or controversy because they are not ripe for determination. “A justifiable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical, or abstract dispute.” Southern Bank & Trust Co. v. Harrison Sales Co., 328 S.E.2d 66, 67 (S.C. 1985); see Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co., 301 S.E.2d 761 (S.C. 1982). Furthermore, in South Carolina, the courts cannot issue advisory opinions and cannot alter precedent based on questions which are presented in the abstract. Sangamo Weston, Inc. v. National Surety Corp., 414 S.E.2d 127 (S.C. 1992);

Biter v. South Carolina Employment Securities Comm'n, 280 S.E.2d 60 (S.C. 1982); Booth v. Grissom, 217 S.E.2d 223 (S.C. 1975) (“It is elementary that the courts of this State have no authority to issue advisory opinions.”). In their pleadings the Consumer Advocate and Sequent ask the Commission to issue an advisory opinion based on the possibility of future events, which may or may not happen. The Commission, like the courts of this state, believes it is unnecessary and wasteful of public and private resources to devote valuable time and effort to hearing, considering and deciding an abstract and hypothetical issue.

4. The Commission is cognizant that in the future the issue of the provision of services similar to those to be provided under the Contract to other similarly situated customers may be ripe for review. Such review may include a determination of whether the use of the word “experimental” limits the right of other similarly situated customers to receive services similar to those to be provided under the Contract. That time, however, is not now. When the issue arises, if it ever does, and is justiciable, all interested parties with standing will have full opportunity to present their views and arguments, consistent with law and Commission rules and regulations.

5. Finally, the Commission concludes that its decision herein shall not prejudice any of the positions advanced by the Consumer Advocate or other parties and that these issues may at some point be heard in the future. Thus, while we approve the Contract herein, we defer ruling on all other issues raised or presented until such issues are justiciable, including Sequent’s request to intervene out of time.

Now, therefore, based upon the evidence in this docket and the findings of fact and conclusions of law made herein,

IT IS HEREBY ORDERED THAT the Agreement for the Provision of Experimental Resale Firm Service and Transportation Between the City of Orangeburg, South Carolina, and South Carolina Pipeline Corporation is hereby approved.

IT IS FURTHER ORDERED that the Consumer Advocate's request³ for an immediate hearing on the meaning of the word "experimental" in the Contract and on whether the services to be provided under the Contract must be made available to all other customers similarly situated is deferred, with leave granted to renew the hearing request when, and if, a similar situated customer seeks and is denied similar services.

IT IS FURTHER ORDERED that Sequent's motion to intervene out of time is deferred until, and if, a similar situated customer seeks and is denied similar services and the issue of the denial is to be adjudicated in this docket.

³ We note that the Consumer Advocate has the authority as granted in S.C. Code Ann. § 37-6-604 to represent the "public at large and not individuals," and this Order does not address, interpret, limit, or expand that statutory authority in the context of this docket or the issues presented herein.

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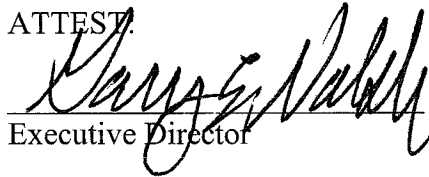
IT IS FURTHER ORDERED that this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Executive Director

(SEAL)